IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

Crl.MC.No. 428 of 2007()

CMP.7520/2004 of CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

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PETITIONER:

ALEXANDER PANICKER, AGED 48 YEARS,
S/O. IDICKULA PANICKER, ADVOCATE,
RESIDING AT "PANICKERS", THEVALLY, KOLLAM.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.428 of 2007

Dated this the 28th day of February 2007

O R D E R

The petitioner is a member of the noble profession who has practice before the court of the learned Chief Judicial Magistrate, Kollam. There was an alleged incident in the court - to be specific, in the premises of the court on 24/11/2004. About that alleged incident, the rival contestants appear to have filed complaints before the learned Chief Judicial Magistrate. The crux of the rival assertions is that the other has committed contempt of court. The learned Magistrate appears to have proceeded with those two complaints received. Sworn statements of some witnesses were recorded. Thereafter, there was a change of the incumbent and the present learned Chief Judicial Magistrate has issued Annexure-A notice to the petitioner. The notice reads as follows:

> "Take notice that a petition was filed against you as CMP-7520/04 on the file of this court. You are hereby required to appear before this court in person on 23/2/2007."

2. On receipt of the notice, the petitioner has rushed to this court. He did not appear before the learned Chief Judicial Magistrate. According to him, he does not know why such a notice issued to him. Has cognizance been taken of any offence against him? Is he being summoned as a witness in the complaint alleged by him? In absolute confusion, the petitioner has come to this court complaining about the vague, non-specific and unsatisfactory notice issued to him by the learned Chief Judicial Magistrate.

3. By order dated 20/02/2007, this court called for a report from the learned Chief Judicial Magistrate. The learned Chief Judicial Magistrate has submitted a report in which the factual details are explained. According to the learned Chief Judicial Magistrate, notice was issued as there was an allegation of contempt committed by the petitioner. He has to be heard. It is only for that purpose that notice was issued to the petitioner.

4. I must say that it is not possible to make such assumptions on a reading of Annexure-A notice. The learned Chief Judicial Magistrate must certainly have issued a notice giving details about the purpose for which the petitioner is

expected to appear. A person, who is called upon to explain, must certainly know that he has been called upon for that purpose. He must also know what he has got to explain.

5. The learned counsel for the petitioner submits that the allegations, even if accepted, do not amount to any contempt and that it is unnecessary to insist on the personal appearance of the petitioner.

6. I need only hold that Anenxure-A notice is not sufficient or satisfactory. The learned Chief Judicial Magistrate shall be at liberty to issue a fresh notice to the petitioner. Such notice must specify what the petitioner is expected to respond to, when he appears. The submission of the learned counsel for the petitioner that the allegations do not prima facie reveal any valid allegations of contempt must also be considered by the learned Magistrate before issuing the notice. The learned Magistrate must also consider whether it is necessary to insist on the personal appearance of the petitioner or whether appearance through counsel will be sufficient. The notice must specify whether the petitioner is expected to appear in person or not. Needless to say, the petitioner shall be at liberty to appear

and raise all his contentions before the learned Chief Judicial Magistrate.

7. This Criminal Miscellaneous Case is accordingly allowed. It is directed that no further action shall be taken on the basis of Annexure-A. The learned Magistrate shall be at liberty to continue the proceedings in accordance with the observations earlier made.

(R.BASANT, JUDGE)

jsr

The grievance of the petitioner is that he has been served with the notice, a copy of which is produced as Annexure A, under which the learned Chief Judicial Magistrate, Kollam has required him to appear before the court in person on 23/02/2007. The petitioner submits that he is unable to understand why he is summoned. Is he summoned as a party? Or is he summoned as an accused? According to the petitioner, the notice issued to him does not comply with the provisions of law. His personal appearance in court before which he appears may cause embarrassment to him unnecessarily. It is, in these circumstances, that the petitioner has come to this court with this petition.

2. I am satisfied that a report must be called for from the learned Magistrate as to the purpose of which the petitioner is summoned to appear as per the notice dated 20/12/2006. The learned Magistrate shall, in detail, furnish to the court, the background of the proceedings and the position in which the

petitioner is summoned by the court. His personal presence shall not be insisted on 23/02/2007. The registry shall ensure that the report is received by 27/02/2007.

Call on 28/02/2007.

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006